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Supreme Court of the United States

OCTOBER TERM, 1951.

No. 564.

GENERAL SHOE CORPORATION,
Petitioner and Respondent Below,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent and Petitioner Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the United States Supreme Court:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

In this proceeding the respondent sought and obtained a court order for the enforcement of its decision and order

directing the petitioner to disestablish five labor management committees, known as the Advisory Committee, Grievance Committee, Safety Committee, Benefit Committee, and Finance Committee, in the petitioner's shoe manufacturing plants located in the States of Tennessee, Georgia, Kentucky and Alabama. The Board's order embraces twenty-two plants and approximately one hundred active labor management committees, all of which are ordered disestablished.

(R., 30-31.)

There are no issues of fact in the case. All pertinent facts were either stipulated by the parties at the hearing or are undisputed.

(R., 29, Footnote 2.)

Both the Trial Examiner and the Board found that these labor management committees *did not engage in collective bargaining,* entered into *no collective bargaining contracts* with petitioner, were wholly *advisory* or *cooperative* in character, and that action taken by the petitioner upon any committee actions or recommendations was wholly *unilateral.*

(R., 60.)

The undisputed evidence of all of the witnesses called by the Board disclosed a complete absence of domination or control of the committees by petitioner's supervisory employees and officers and the Board rested its conclusion of domination and interference upon the *theoretical possibility* of domination or interference, as will appear from the following quotation from the Board's decision and order:

> "It is clear that the employer has dominated and interfered with the formation and administration of the committees. It established the committees, defined their function, and reserved to itself the right

to pass upon committee recommendations. Furthermore, the mere possession by the employer of the power, *whether exercised or not,* to unseat members of such employee committees by transfer or discharge places the employer *in a position* to dominate the committees" (Emphasis added).

(R., 73.)

All of the witnesses called by the Board (no other witnesses were called) testified to the absence of any actual domination.

(R., 401-410.)

The Board also found that the payment by petitioner of make-up pay to committee members for time spent in their deliberations computed on *an average* hourly earnings basis (as distinguished from *actual* earnings), was a contribution of financial support to the committees not authorized by Section 8 (a) (2) of the National Labor Relations Act.

(R., 73.)

The Board further found, in effect, that the various labor-management committees were not true employee *representation* committees, this holding being as follows:

"The rights of the employees to participate in the activities of these committees result automatically from their employment, rather than from any voluntary affiliation or selection of the committees as their representatives. These rights consist principally of voting for committee members. The committee members are not obliged to submit their proposals to the employees for approval, although they frequently do sound out sentiment among the employees with respect to issues under discussion."

(R., 71-72.)

The Board concluded, however, that the various committees of the type above described were "labor organiza-

tions" within the meaning of Section 2 (5) of the National Labor Relations Act and ordered all of the committees disestablished, notwithstanding a complete lack of employee representation by the committee, the complete absence of the use of the committees for collective bargaining, in the face of undisputed affirmative evidence showing no domination or control by petitioner. *The Board concluded that such drastic action was required to effect the policies of the Act.*

The effect of the Board's decision and order, and of the enforcement decree of the Court of Appeals for the Sixth Circuit, is to outlaw the establishment of labor-management committees even though not established for or engaged in collective bargaining, operating freely and independently without actual domination or control, functioning purely in an advisory character to cooperatively aid management in the solution of its problems. Thus, by one stroke, it destroys the right of management to conduct its business both fairly and intelligently with the cooperation of its employees.

The whole philosophy behind the Board's conclusion is contrary to the spirit and purpose of the Act. Implicit in the Board's holding is the conclusion that an employer no longer has the legal right to adopt so intelligent and such a fair labor relations policy as to keep down disputes and render collective bargaining both undesirable and unnecessary.

The learned Court of Appeals for the Sixth Circuit expressed its reluctance in granting enforcement of the Board's order, but stated that it felt obligated so to do by reason of its previous decision in *National Labor Relations Board* v. *Tappan Stove Co.*, 174 F. 2d 1007, "wherein we reluctantly granted enforcement of the Board's order."

(Opinion, Court of Appeals, first paragraph, page 1.)

An examination of the opinion in the previous decision just cited will disclose that the same Court of Appeals, speaking through the same Judge, enforced the Board's order in that case only because it felt obligated so to do under a decision of this Court, saying:

> "In our judgment we must enforce the order of the Labor Board upon the binding authority of the Supreme Court's opinion in *National Labor Relations Board* v. *Southern Bell Telephone and Telegraph Co.*, 319 U. S. 50, 63 S. Ct. 905, 908, 87 L. Ed. 1250."
>
> *National Labor Relations Board* v. *Tappan Stove Co.*, 174 F. 2d, at p. 1013.

Thus, for final authority, the decision below is rested upon the decision of this Court in *National Labor Relations Board* v. *Southern Bell Telephone and Telegraph Co., supra. The decision of this Court in the Southern Bell Case involved a dues-paying orthodox employees' union, organized for and engaged in collective bargaining with the Telephone Company, and found by the Board to be actually dominated and controlled by the company.* The employee organizations involved in the *Tappan Stove Co. Case, supra,* were union organizations formed for the purpose of collective bargaining, and which had actually engaged in collective bargaining, and actual domination and control was found to exist. The controlling facts in both cases were wholly dissimilar to those in the present case.

COMMITTEES IN QUESTION.

In order that the Court may see the full scope of the activities of the labor-management committees which have been outlawed in the present case, the following brief summary is submitted:

Advisory Committee.

The purpose and scope of the activities of the Advisory Committee appear from the following quotation from the petitioner's Employees' Handbook:

> "The Management is convinced that one of the Company's greatest assets is the thinking and suggesting ability of the employees. This has been proven time and time again by the suggestions and questions that have come from individual employees."
> (R., 428.)

The handbook specifically stated:

> "The Advisory Committee acts in an advisory capacity to Management, having no authority to make final decisions but rather recommendations."
> (R., 429.)

The Board approved and adopted the following findings of the Trial Examiner as typical of this committee's activities:

> "Candy, cigaret and coke machines be cleaned every day as suggested by the girls in Nail Fitting; that the large spray can be connected by one pipe with a faucet in the middle and cut off from each spray can as suggested by Helen Medlin of Welt Pack.
>
> "More lights added to the bins following the suggestion of Fulton Jacks of Shipping; repair of the water fountain in front of the Shipping Room as suggested by Gladys Wilson."
> (R., 38.)

Other typical suggestions cited by the Examiner and approved by the Board related to soap dispensers in the rest rooms, more brooms in one department, a new pencil sharpener, repair of light on clock, and other similar matters.

(R., 38-39.)

Grievance Committee.

The reason for the establishment of the Grievance Committee was stated in the handbook as follows:

> "The Company is anxious to be informed of any conditions that cause irritations or grievances. Such conditions cannot be corrected until they are KNOWN by the Company. Employees should not hesitate about bringing up their grievances. Any employee may take his grievance to any Supervisor, Executive, or Officer of the Company, including the President or Chairman, either in person or by letter. However, most employees prefer to use the regular established grievance procedure."
> (R., 40.)

After reviewing the various procedures provided for the handling of grievances, the Trial Examiner found as a fact, and the Board approved and adopted such finding, as follows:

> "It appears that employees are not permitted to make group grievances, but are required to act as individuals."
> (R., 49.)

Section 9 (a) of the National Labor Relations Act *expressly* provides:

> "* * * Any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining contract or agreement then in effect * * *."

There was no collective bargaining contract or agreement in effect at any of petitioner's plants. *Nevertheless, the Board completely and effectively outlawed the peti-*

tioner's grievance procedure in plain violation of the above quoted permissive provision in the Act.

Safety Committee.

The Trial Examiner found, and the Board adopted, the following statement as the functions of the Safety Committee:

> "The functions of the Safety Committee are to consult with and to make recommendations to Management on matters concerning employees' health and safety. The committee makes plant inspections during working hours. Its meetings are attended by the plant superintendent and personnel manager. The latter acts as its secretary and prepares its minutes on forms furnished by the Respondent."
>
> (R., 50.)

The Trial Examiner found, and the Board approved, the following matters as representing "typical matters handled and actions taken by the Committee":

> "1. Ernie Hardison suggested that bushes at entrance to parking lot be cut. This will be done.
>
> "2. Elizabeth Bowers that tin on the floor near coca cola machine be nailed down. This will be done.
>
> "3. Clifford Haislip stated he had had several suggestions and complaints that the hospital door be made wider as it is impossible to get a stretcher through the door.
>
> "4. J. B. Graham stated the need for new wiring on cutting machines in Cutting Department. Bad places in wiring has been repaired and it has been explained that when plant is rewired, they will be placed in conduits."
>
> (R., 50-51.)

Benefit Committee.

The Trial Examiner found, and the Board approved, the following statements concerning this Committee:

> "With the exception of the plants heretofore noted, all employees of the Respondent, excluding supervisory employees, automatically become members of the Benefit Association at the end of three months continuous employment. Employee members of the Association pay dues in proportion to their weekly earnings.[1] A plant fund, which is deposited in a local bank is created and maintained by payroll deduction of such dues. The purpose of the Association and its fund is to provide financial aid to employee members in time of illness, injury or death, and provide flowers to members and their families under certain conditions. The benefits received by employee members are in proportion to the dues paid." (R., 51.)

The Board's order disestablishing the Benefit Committee made no provision for the disposition of the funds held by the Committees in their respective bank accounts and no mention was made of the rights of sick employees to a continuation of benefits arising out of the dues previously paid by them into the fund.

Finance Committee.

This Committee was found to be a typical employee committee in charge of socials, athletics, and recreation. Profits from sales of such things as foods, drinks, refreshments, etc., purchased by the employees from Company canteens during working hours were placed in a joint fund known as "Employees' Fund." No part of these funds

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[1]Employees do not pay any dues in order to participate in any of the activities of the other Committees (R., 51).

was kept by the Company. The Finance Committee was organized merely to administer and supervise the expenditure of these funds, the Committee consisting of the plant superintendent as Chairman, the personnel manager as Secretary, and various employees selected from each department.

(R., 432-433.)

The Trial Examiner found that the Finance Committee was not a labor organization.

(R., 60.)

The Board disagreed with the Trial Examiner because the evidence showed that at some of the plants funds had been expended to purchase moving picture projectors to exhibit films during the lunch period and for records to play music over the public address system during working hours. The Board concluded that when employees spent their funds to purchase records to play music during working hours it was dealing "to some extent" with an employer concerning the normal subjects of collective bargaining.

(R., 73-74.)

Make-up Pay to Committee Members.

Petitioner paid "make-up pay" for time lost by committee members in meetings at the rate of $1.60 per hour. Petitioner's employees worked on a piece-rate basis. The proof showed that the rate of $1.60 an hour was an average earning of the piece-rate workers.

(R., 179-180.)

During the hearing a spot check was made of the actual piece-rate earnings of the members of the Advisory Committee at one of petitioner's plants in Nashville, Tennessee, and these actual earnings averaged $1.587 per hour.

(R., 205, 206.)

Actual earnings ranged from approximately $1.00 an hour to in excess of $2.00 an hour.

(R., 371.)

Section 8 (a) (2) of the Act makes it an unfair labor practice:

> "(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *provided*, That subject to rules and regulations made and published by the Board pursuant to Section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay; * * *"

Notwithstanding the above evidence, and the clear protection of the Act, the Trial Examiner and the Board found as follows:

> "The proviso of Section 8 (a) (2) does not protect such payments. Accordingly I conclude and find that the Respondent on and after December 20, 1948, dominated and interfered with the formation and administration of and contributed support to the Advisory, Safety, and Benefit Committees in violation of Section 8 (a) (2) of the Act."
>
> (R., 61.)

JURISDICTIONAL STATEMENT.

The opinion in the Court of Appeals for the Sixth Circuit has not yet been officially reported and will be found beginning at page 716 of the record. The opinion was handed down on November 26, 1951, and judgment entered on the same date. Thereafter, on the 7th of December, 1951, petitioner filed a petition for a rehearing, which was denied on the 10th day of December, 1951. The statutory provisions believed to sustain jurisdiction are Sections 237 (b) and 240 (a) of the Judicial Code as amended.

QUESTIONS PRESENTED.

The following important questions, not previously determined by this Court, are presented:

(1) Does National Labor Relations Act by its terms, or necessary implication, declare the organization and support of labor-management cooperative committees, not intended for, or actually engaged in collective bargaining, an "unfair labor practice"?

(2) Are labor-management committees of the type involved in the present case "labor organizations" within the meaning of Section 2 (5) of the Act?

(3) Is the payment of make-up pay, computed on an average rate for piece workers, to members of labor-management committees authorized by Section 8 (a) (2) of the Act?

(4) Assuming labor-management committees of the type involved to be "labor organizations" as defined by the Act, did the Board depart from its stated policy in ordering the complete disestablishment of such committees, as distinguished from an order to cease and desist from bargaining with such labor organizations until certified by the Board?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Petitioner submits that the Supreme Court should take jurisdiction and review the judgment herein questioned, because:

(1) The decision of the Court of Appeals for the Sixth Circuit in the present case involves important ques-

tions of Federal law which have not been, but should be, settled by this Court.

(2) The decision of the Court of Appeals for the Sixth Circuit in the present case conflicts with the decision of the Court of Appeals for the Third Circuit in *National Labor Relations Board* v. *James H. Matthews & Co.*, 156 F. 2d 706, in which that Court, while upholding the disestablishment of the committees therein being considered, expressly said:

> "In so doing we are in no way even suggesting the illegality of a program of labor-management committees."

PRAYER.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court had in the case numbered and entitled on its docket No. 11,331, *National Labor Relations Board, Petitioner,* v. *General Shoe Corporation, Respondent,* to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of the said United States Court of Appeals for the Sixth Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated this 25th day of January, 1952.

General Shoe Corporation,
By Cecil Sims,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Petitioner hereby adopts, and makes a part of this brief, the statement as to jurisdiction, the opinion of the Court below, and the statement of the case as set out in the Petition.

SPECIFICATION OF ERRORS.

1. The Court erred in holding that the various labor-management committees in petitioner's plants, consisting of the Advisory Committee, Grievance Committee, Safety Committee, Benefit Committee, and Finance Committee, were "labor organizations" within the meaning of Section 2 (5) of the National Labor Relations Act.

2. The Court erred in upholding and enforcing the order of the National Labor Relations Board disestablishing said committees and each of them in the absence of substantial evidence to show actual existing domination or control, as distinguished from the theoretical possibility of such domination or control.

3. The Court erred in finding and holding that the payment by petitioner of "make-up pay" at the rate of $1.60 an hour to the members of the Advisory, Grievance and Safety Committees for time spent at committee meetings constituted support of labor organizations not authorized by the provisions of Section 8 (a) (2) of the National Labor Relations Act.

4. The Court erred in failing to hold that Section 9 (a) of the National Labor Relations Act expressly au-

thorized the petitioner to deal directly with its employees on individual grievances under the procedure established for the Grievance Committee.

5. The decision and order of the National Labor Relations Board should not have been enforced by the Court to the extent of directing the disestablishment of the various committees in the absence of proof of actual existing domination or control and said order, at most, should have been enforced only to the extent of directing petitioner not to engage in collective bargaining with said committees, such being the officially stated and published policy of the Board under such circumstances.

ARGUMENT.

Summary of the Argument.

POINT A. It was not the intent or purpose of the National Labor Relations Act to interfere with or prevent the formation and operation of labor-management committees and such committees are not within the definition of "labor organizations" found in Section 2 (5) of the Act, unless they extend their functions to the field of collective bargaining, or are used as a covert means of discriminating against or in favor of membership in a labor organization. Congress expressly recognized the fact that labor-management committees, confined to their proper sphere, promote amicable relationships between employers and employees and therefore tended to *prevent* rather than *cause* the industrial strife which Congress sought to eliminate in the passage of the Act.

POINT B. The payment of make-up pay at the rate of $1.60 an hour to the employees on the Advisory, Grievance and Safety Committees for time actually spent in

committee work, said hourly rate being computed on an average basis, was not a prohibited financial contribution, the same being authorized by Section 8 (a) (2) of the National Labor Relations Act, which expressly provides that employers are not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay. The Act authorizes the Board to adopt rules and regulations relating to such make-up pay, but the Board has failed to do so. In the absence of such rules and regulations the employer is free to adopt any reasonable methods, such as average make-up pay, to indemnify employees against such loss of time or pay.

POINT C. The National Labor Relations Act does not *require* either the presence of a labor union or the existence of a bargaining agent in order to settle grievances between the employer and the employee. Section 9 (a) of the Act specifically authorizes the presentation of grievances to an employer "and to have such grievances adjusted" without the intervention of either a union or a bargaining representative. The only restriction in this field is that, if a collective bargaining contract or agreement is then in effect, while the individual employee still has the right to adjust his grievance with the employer without the intervention of the bargaining representative, any settlement agreed upon must not be inconsistent with the terms of the existing collective bargaining contract. No such agreement was in effect in the present case, and there was no union representing the employees as bargaining agent. The procedure set up by the petitioner for the handling of grievances, including the operation of the Grievance Committee, therefore did not violate any provision in the Act.

POINT D. The undisputed testimony, elicited entirely from the Board's own witnesses and stipulated to

be true with respect to all of the petitioner's plants, showed a complete absence of either domination or control of any of the committees. In *Carpenter Steel Co. and United Steel Workers of America*, Case No. 4-C-1579, decided March 16, 1948, Vol. 76, N. L. R. B. Decs., p. 670, the Board published a formal statement of its future policies of enforcement of the Act, declaring unequivocally that disestablishment would no longer be considered the effective remedy except where there was proof of *actual domination*. In the absence of actual domination, the Board stated that its policy would be in cases involving interference and support the withholding of recognition of such labor organizations until certified as exclusive bargaining agent. The Board's order in the present case to disestablish more than one hundred labor-management committees where the record completely negatives actual domination was therefore a clear departure from the Board's stated policy.

POINT A.

Labor-management committees which do not invade the field of collective bargaining, and are not used as a covert means of discriminating against or in favor of membership in any labor organization, were not intended to be outlawed by the National Labor Relations Act and they are not "labor organizations" within the meaning and contemplation of those terms as used in the Act.

In the passage of the original Wagner Act, the 74th Congress, in its First Session, gave careful consideration to the status of labor-management committees. The Senate Committee which recommended the passage of the Wagner Act, in Senate Committee Report No. 573, dated May 2, 1935, gave the following interpretation to the term "labor organization":

> "Nor does anything in the bill interfere with the freedom of the employers to establish pension bene-

fits, outing clubs, recreational societies, and the like, so long as such organizations do not extend their functions to the field of collective bargaining, and so long as they are not used as a covert means of discriminating against or in favor of membership in any labor organization. *Such agencies, confined to their proper sphere, have promoted amicable relationships between employers and employees and the Committee earnestly hopes that they will continue to function"* (Emphasis added).

Senate Committee Report No. 573, May 2, 1935, 74th Congress, First Session.

When the so-called Taft-Hartley Act came before the 80th Congress at its First Session in 1947, the Committee of Conference (House Report No. 510, June 3, 1947), expressly stated in their report:

"Sec. 8 (d) (3) of the Amended Labor Act in the House Bill provided that nothing in the Act was to be construed as prohibiting an employer from forming or maintaining a committee of employees and discussing with it matters of mutual interest, if the employees did not have a bargaining representative. This provision is omitted from the Conference Agreement since the Act by its terms permits individual employees and groups of employees to meet with the employer and Sec. 9 (a) of the Act permits employers to answer their grievances."

House Report No. 510, June 3, 1947, Committee of Conference, on HR3020, 80th Congress, First Session.

This Court has never been called upon (so far as we have been able to find) to pass upon the legality of labor-management committees where such committees were confined to their proper sphere. No Federal Circuit Court of Appeals, in any reported decision, has ever classified or outlawed labor-management committees as "labor organi-

zations" within the meaning of the Act, except upon an express or implied showing that such committees invaded the field of collective baragaining or were used as a covert means of discriminating against existing labor organizations, with the single exception of the present decision of the Sixth Circuit.

On the other hand, the Third Circuit, in a decision which ordered enforcement of the Board's order to disestablish an organization known as the "Junior Board," did so *solely* because the Board functioned as a collective bargaining agency and was actually dominated and controlled by the employer, and the Court was *very careful* to point out that:

> "In so doing we are in no way even suggesting the illegality of a program of labor-management committees."
>
> *NLRB* v. *James H. Matthews & Co.*, 156 F. 2d 706.

Section 2 (5) of the Act is as follows:

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Both the Court below and the Board reached the conclusion that since the committees participated in discussions relating to matters which would have been proper subjects for collective bargaining *if a bargaining or representation committee had existed in the plants,* such activities came within the statutory definition of "dealing with employers," even though such discussions were purely *advisory* and action taken by the employer was always *unilateral,* as distinguished from collective bargaining.

Petitioner earnestly insists that before any labor-management committee, constituted as those involved in the present controversy, could fall within the statutory definition of a "labor organization," it must have been either an agency or employee representation committee "in which employees participate and which exists for the purpose" of *dealing with* the employer in the sense of making a *deal,* which in common parlance means *negotiating an agreement.*

Petitioner submits that the statutory language "dealing with" must be construed in the light of the Committee Reports from which quotations are set out above, having in mind that it was the underlying purpose in the passage of the legislation to minimize and prevent labor-management disputes. The Conference Committees specifically reported to the Congress that nothing in the proposed Act was intended to interfere with the continuation of labor-management committees of the type involved in the present case since such agencies were considered to have promoted amicable relationships between employers and employees. It was for this reason that the Committee said:

> "The Committee earnestly hopes that they will continue to function."

Certainly such committees cannot continue to function except with the cooperation and assistance of management and under these circumstances it would be contrary to the express intent and hope of the Committee to say that it was the intent of the legislation to declare it an unfair labor practice for an employer to participate in the formation of such committees or to cooperate with them after such formation.

On the other hand, in defining labor organizations to include employee representation committees which existed

"for the purpose, in whole or in part, of dealing with employers concerning grievances * * *," it is entirely consistent with the spirit and purpose of the Act to prohibit management from dominating committees (even though denominated labor-management committees) which were in fact intended for the purpose of negotiating an agreement with the employer where such committees purported to act as the representatives of the entire body of employees.

> " 'Dealing' implies ordinarily a trade between two opposite parties, of which there was none here."
> *Borg* v. *International Silver Co.*, 11 F. 2d at page 150.

Webster's International Dictionary, Second Edition, Unabridged, defines the verb "deal" as follows:

> "To act as intermediary in business or any affairs; to make arrangements; to negotiate."

Furthermore, to hold that labor-management committees of the type here involved were statutory "labor organizations" within the meaning of the Act would *require* the petitioner to bargain collectively and in good faith with each of said Committees (in the absence of domination or control). The Act would also require the Board to certify such Committees as the exclusive bargaining agent of the employees. Since each Committee was limited in the scope of its particular activities, its bargaining activities would consequently likewise be limited. Taking the Finance Committee as an illustration, the petitioner would thus be required to bargain collectively with this Committee concerning picnics, dances, baseball games and social outings, and if it failed to do so it would be guilty of an unfair labor practice. The Benefit Committee could demand a collective bargaining agreement requiring the employer to send flowers to the funerals of deceased employees.

POINT B.

It is believed that no extended argument is required to demonstrate the error of the Court in upholding the Board's decision that the provisions of Section 8 (a) (2) of the Act did not protect the petitioner in the payment of average pay to Committee members to compensate them for time lost in Committee meetings. Average pay is a familiar device for the implementation of Federal statutes in the field of wages and hours and labor relations. The Labor Board itself in cases involving restitution of back pay because of discriminatory discharge uses the formula of average pay or average rate of pay. The Wage and Hour Law computes earnings on the basis of average pay. In the present case there was no insistence of excess payments made intentionally or as a subterfuge. Petitioner honestly attempted to arrive at an average pay for Committee members, most of whom were older employees who earned considerably above the average.

(R., 179, 180.)

While the Trial Examiner pointed out that of the seven members of the Advisory Committees in one of the plants, three earned less than $1.60 per hour, he failed to point out the undisputed fact that the remaining four earned more than $1.60 per hour and that the complete average of all seven Committee members was $1.587 per hour.

(R., 205, 206.)

The Act specifically authorized the Board to make and publish rules and regulations covering the method of paying employees for time lost in meetings. It is conceded that the Board has made no such rules or regulations. It would seem clear, therefore, that the Court erred in holding that the payment of average wages was not protected by the Act.

POINT C.

The petitioner's method of handling individual employee grievances was characterized in the Handbook in the following language:

> "General Shoe grievance handling is on a man to man basis with fair dealing as the key stone. * * *
>
> "The Company is anxious to be informed of any conditions that cause irritations or grievances. Such conditions cannot be corrected until they are KNOWN by the Company. Employees should not hesitate about bringing up their grievances. Any employee may take his grievance to any supervisor, executive or officer of the Company, including the President or Chairman, either in person or by letter. However, most employees prefer to use the regular established grievance procedure."
>
> (R., 40.)

The Trial Examiner further found, with the Board's approval:

> "It appears that employees are not permitted to make group grievances, but are required to act as individuals."
>
> (R., 49.)

In holding that the Grievance Committee should be disestablished neither the Board nor the Court took any notice whatsoever of the plain provisions of Section 9 (a) of the Act, which is as follows:

> "* * * Any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining contract or agreement then in effect. * * *"

Thus the Act provides that even if the employees have selected bargaining representatives and have entered into a contract with the employer, any employee or group of employees (which would manifestly include committees) have the legal right to deal with the employer for the purpose of having grievances adjusted provided such adjustment is not inconsistent with any of the affirmative provisions of a collective bargaining contract. Here the petitioner has neither a collective bargaining contract nor does it bargain with the employees on a collective basis, yet both the Board and the Court found that Committees of employees have no right to deal with, consult, or advise with the petitioner with respect to grievances.

Petitioner submits that such a position resolves itself, in the final analysis, into the contention that grievances and other working conditions must be so neglected by the petitioner that dissatisfaction will arise and thereby force employees to accept the principle of collective bargaining *as the only available alternative.*

Indeed, such was, in substance, the sworn testimony of Mr. Herzog, Chairman of the National Labor Relations Board, in his testimony before the Senate Committee on Labor and Public Welfare on March 6, 1947, from which we quote as follows:

> "We have always assumed it to be our duty, in compliance with the declaration of Congressional policy that prefaces the Act, to encourage 'the practice and procedure of collective bargaining.' We have administered the Act accordingly. In consequence, the Board has some times been accused of bias. *We admit to a bias in favor of collective bargaining*" (Emphasis added).
>
> Hearings before Committee on Labor and Public Welfare, United States Senate, on S. 55 and S. J. Res. 22, *Part IV, page* 1848.

POINT D.

Assuming, for the purpose of argument, that petitioner's labor-management Committees are, as a matter of law, "labor organizations" within the meaning of the Act, the policy of the Board with respect to the type of order to be issued was clearly set out and published for future guidance in *Carpenter Steel Co. and United Steel Workers of America*, Case No. 4-C-1579, decided March 16, 1948, Vol. 76, N. L. R. B. Decs., page 670, in the following language:

> "In all cases in which we find that an employer has dominated, or interfered with, or contributed support to a labor organization, or has committed any of these prescribed acts, we will find such conduct in violation of Section 8 (a) (2) of the Act, as amended in 1947, regardless of whether the organization involved is affiliated. Where we find that an employer's unfair labor practices have been so extensive as to constitute domination, we shall order its disestablishment, whether or not it be affiliated. The Board believes that disestablishment is still necessary as a remedy, in order effectively to remove the consequences of an employer's unfair labor practices and to make possible a free choice of representatives, in those cases, perhaps few in number, in which an employer's control of any labor organization *has extended to the point of actual domination.* But when the Board finds that an employer's unfair labor practices were limited to *interference* and *support and never reached the point of domination,* we shall only order that recognition be withheld until certification, again without regard to whether or not the organization happens to be affiliated."

Since the undisputed proof *affirmatively* shows the complete lack of actual domination or interference, and further since there is no evidence that any of the committees make any claim of the right to certification as bar-

gaining agents, it seems clear that in ordering disestablishment of the five committees the Board departed from and exceeded its own stated policy and consequently, under any aspect of the case, such portions of the Board's order as directed disestablishment of the committees should not have been enforced by the Court, leaving in effect only that portion of the Board's order which directed respondent not to recognize any of the committees for the purpose of collective bargaining.

It will be interesting and instructive for the Court to compare the decision of the Board in the matter of *Wyman-Gordon Company and United Steel Workers of America* (Cases Nos. 13-C-2176 and 13-C-2210, decided June 20, 1945), 62 NLRB Decs. 561, *et seq.*, and the decision in the same matter in the enforcement proceeding in the Circuit Court of Appeals for the Seventh Circuit under the style of *Wyman-Gordon Company, etc.*, v. *NLRB*, 153 F. 2d 480, *et seq.* The circumstances relied on in that case to constitute domination and interference were substantially the same as those averred to exist in the present case. The Board ordered the Wyman-Gordon Company to take the following affirmative action which the Board found would effectuate the policies of the Act:

> "(a) Withdraw all recognition from and completely disestablish the Employees' Council as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or other terms or conditions of employment."

However, on appeal, the Circuit Court of Appeals held that the evidence was not sufficient to support the Board's conclusion of either domination or interference, saying:

> "Petitioner contends that there is no evidence in support of the Board's finding that it either dominated

or interfered with the administration of the Council. We think there is merit in this contention. Certainly there is no direct proof of such domination or interference. In fact there is voluminous testimony by witnesses for both sides that the employees, including the councilmen, were entirely free of all subservience to petitioner. We also note that we do not agree with much of the Board's argument as well as some of its findings designed to show domination and interference."

The Court found that there was evidence in the record to support the Board's finding that the petitioner had contributed financial and other support to the Council. The Court therefore reached the following conclusions:

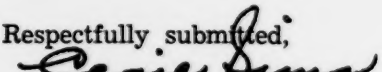
"It seems to us, however, that it would be rather useless to dissect a controversy concerning domination and interference in view of the fact that there is evidence in support of the Board's finding that petitioner contributed financial and other support to the Council. It may be, as petitioner contends, that such support was so infinitesimal as to be of little significance. We are of the view, however, under numerous authorities which need not be cited or discussed, that the support furnished was sufficient to justify the Board's finding in that respect. It follows that the Board was authorized to characterize such support as an unfair labor practice and to order the disestablishment of the Council."

153 F. 2d, at p. 482.

The Court will observe that the decision in the *Wyman-Gordon Company* case was *prior* to the establishment of the Board's new policy as outlined in the *Carpenter Steel Co.* case. Even then the Board merely ordered Wyman-Gordon Company to withdraw recognition from and to completely disestablish the Council as the representative of its employees for the purpose of dealing with

the matters covered in the order. Under the new Board policy, since there was no evidence to support any claim of actual domination or interference, and since the only support in the evidence related to financial and other support, the Board was limited in the present case by its own published policy to enter an order withholding recognition of the committees as bargaining agencies until certified by the Board pursuant to the provisions governed by Section 9 (c) (2) of the Act.

Respectfully submitted,



CECIL SIMS,

Attorney for Petitioner.

January, 1952.

APPENDIX.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. III, Secs. 151, *et seq.*), are as follows:

SEC. 2, when used in this Act—

* * * * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the Board pursuant to Section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * * * *

9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 564

GENERAL SHOE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 716-722) is reported at 192 F. 2d 504. The findings of fact, conclusions of law, and order of the Board (R. 29-66, 71-77) are reported at 90 NLRB 1330.

JURISDICTION

The decree of the court below (R. 715) was entered on November 26, 1951. Petitioner's application for rehearing, filed on December 7, 1951 (R.

723-729), was denied on December 10, 1951 (R. 731). The petition for a writ of certiorari was filed on February 1, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and 2106.

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that petitioner, in violation of Section 8(a)(2) of the Act, dominated the employee representation committees with which it dealt concerning grievances, wages, rates of pay, hours of employment, and conditions of employment.[1]

2. Whether the committees constituted a "labor organization" within the meaning of Section 2(5) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 14-15.

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[1] Petitioner's question numbered (3) (Pet. 12, 22), pertains to only one of the many subsidiary findings on which the Board based its conclusion that petitioner unlawfully dominated and supported the committees. In any event, since petitioner did not confine its payments to committee representatives to compensation for lost working time spent in conferring with management (R. 61; 262, 379, 381-382, 488), the issue petitioner raises concerning the propriety of its method of computing compensation for loss of earnings is not properly presented in this case. Petitioner's question numbered (4) (Pet. 12, 25-28) appears to be based on the false premise that the Board did not find that petitioner dominated the committees. To the extent that petitioner in this question challenges the evidentiary basis for that finding, its challenge is comprehended in our question numbered (1).

STATEMENT

A. *The facts as found by the Board*—Upon the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on July 25, 1950, issued its findings of fact, conclusions of law, and order. The facts as found by the Board on uncontradicted evidence (R. 71, 716, 29, n. 2) may be summarized as follows: [2]

1. Petitioner maintains at its various manufacturing plants a comprehensive system of employee representation committees, consisting of Advisory Committees, Grievance Committees, Benefit Committees, Safety Committees, and Finance Committees (R. 30, 31, 71; 89-91, 156-157).[3] Each of these committees was created, organized, and installed in the plants by petitioner (R. 30-31, 72; 25, 93-97, 174, 259, 276-278, 294-296, 685-686). Employees were first notified of the establishment of the committees by the plant superintendent who announced that a particular committee was to be formed, explained its purpose, and drew up its constitution, bylaws, and rules (R. 31, 42-46; 160, 175-176, 259, 277-278, 296, 299, 313-316, 428-433, 434-436, 448, 469-486, 495, 683-686, 707-711). The first employee

[2] In this statement, record references preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[3] These committees form a part of petitioner's "Guaranteed Policies, Practices and Procedures" (R. 30-31; 412) set forth in the Employees Handbook which is published annually by petitioner and distributed to each employee (R. 30-31; 87-88, 412-447).

participation in the formation of any committee occurred when the committeemen were elected (R. 174, 260).

These elections were held in the plants during working hours (R. 31, 73; 187, 296, 315, 328-329, 389, 429). The ballots were prepared and furnished by petitioner at its expense, and petitioner set the time for elections (R. 31; 187, 266, 279, 315, 328, 481). The personnel office participated in the distribution, collection and counting of the ballots (R. 31-32; 187-188, 315, 328-329). After the election, the successful candidates were instructed by petitioner as to the nature of their functions (R. 296).

Employees were allowed to serve on only one committee at a time, and in the case of certain committees, were not allowed to succeed themselves in office (R. 32; 189-190, 194). Membership on a committee was automatically lost when the elected representative was transferred to another department (R. 32; 190, 193, 284). Provision was made for alternates to attend committee meetings when regular members were unable to attend, as, for example, when a plant superintendent, thinking it "the best thing for the employees as a whole," directed the regular member to continue working at his job and not attend the meeting (R. 221-222).

Meetings of the committees were conducted at the plants on company time, and the committees were supplied by petitioner with stationery and

with stenographic, secretarial, bookkeeping and printing services (R. 54-57, 60-61, 72, 73; 134, 177, 183, 272, 282, 284-285, 286-287, 288, 297-299, 300, 317, 338-340, 429, 432, 481-482, 483, 696-699.[4] Committee members were paid for time spent at the meetings, not at their regular rates of pay, but at the admittedly "arbitrary" rate of $1.60 an hour (R. 33, 72; 178, 179, 307, 429, 483).[5]

The plant superintendent and personnel manager regularly attended committee meetings and participated in the committees' business (R. 34, 42, 50, 57, 72; 181, 184, 216, 224-225, 272-274, 299, 318, 342-343, 374-375, 387, 432, 491, 505, 526, 681, 703). The personnel manager acted as secretary to the various committees and prepared the minutes for publication in petitioner's newspaper and for posting on the plant bulletin board (R. 34, 42, 57; 182-183, 272-273, 299, 377, 378-379, 432).[6] He also called special meetings when he deemed them necessary, after consulting the superintendent as to agreeable dates and times (R. 34, 42; 178, 272, 373).

---

[4] Petitioner donated the services of its plant nurse as secretary to the Benefit Committee, and checked off employee contributions to the Benefit Fund (R. 51, 54-57; 162, 278, 282, 338-340, 479, 481-482). Payments from this fund were by check prepared in petitioner's check-writing department and signed by petitioner's president (R. 56-58; 286-288).

[5] The $1.60 rate was generally higher than the average prevailing wage scale paid in petitioner's highest paying plant and considerably above the average in its other plants (R. 61, 72; 180, 205-206, 319, 371).

[6] The plant superintendent acted as chairman of the Finance Committee (R. 57; 299, 432).

Petitioner reserved to itself complete power to pass upon committee recommendations (R. 33, 40-42, 72; 185-186, 429, 434-436).[7] It also retained absolute and permanent control over the structure of the committees by reserving power unilaterally to effect changes in, and to veto employee-proposed amendments to, the organic instruments governing the operations of the committees (R. 56, 72; 190, 227, 260, 477, 486).

2. The committees were equipped to and did handle every conceivable issue of concern to employees (R. 31, 74; 157, 336). The various committees functioned as follows:

The purpose of the *Advisory Committee* was to afford "an opportunity for employees, individually or collectively, to have a voice in management" and to be "useful as an advisor on future company policy that directly affects the employees" (R. 32; 428). The committee took up with petitioner on behalf of the employees issues affecting wages and rates of pay, hours of employment, conditions of work, efficiency of production, and recreational activities (R. 74, 38-39), and often dealt also with matters under the ostensible jurisdiction of other committees, such as the Safety, Benefit and Fi-

[7] Checks disbursing funds of the Finance Committee's "Employee Fund" required the signature of the plant superintendent and the countersignature of the personnel manager (R. 59; 297, 433).

nance Committees (R. 38; 388-389, 503, 510, 517-518, 535, 557, 561, 588, 632, 654, 656, 659).[8]

Petitioner's representatives discussed these matters with the committee and presented management's views (R. 34, 36; 213-214, 218, 374-376, 534-535, 550-551, 597-598). At times petitioner accepted the committee's suggestions or requests on

[8] The Advisory Committees discussed with management such matters affecting wages as: compensation for holiday work (R. 640, 651, 661); vacation pay (R. 173, 374, 487, 583, 586, 638); payments for cleaning and oiling machines (R. 570, 628, 659); make-up pay for special work (R. 610, 681-682); minimum guaranteed wages (R. 589, 640); general wage increases (R. 593, 600); job classifications (R. 507, 574-575, 657); wage determining methods (R. 498, 530); and overtime work (R. 577).

Matters discussed relating to hours of employment included: the work-week (R. 528-529, 532, 551, 585, 590, 612, 626-627, 628, 651-652, 654); revised schedules of working hours (R. 590, 612, 631, 640, 652); lunch periods (R. 615, 640); and rest periods (R. 357, 500, 506, 525, 641, 660).

Among the matters affecting working conditions which the committee discussed with petitioner were: regularity of employment and job security (R. 561, 570, 598, 606, 637, 641, 663-664); discrimination in job assignments (R. 658, 577); determination and application of seniority (R. 228, 522, 623, 675, 681-682); procedure for layoff (R. 487, 525, 532, 540, 546, 566); job posting (R. 606, 616); reduction of waiting time for work (R. 556); unsafe or improperly guarded equipment (R. 511, 535, 539, 541, 553, 561, 566, 585, 597, 599, 608, 611, 619, 620, 651, 654, 656, 659); the improvement of facilities and equipment such as drinking fountains (R. 456, 487, 578, 656), rest rooms (R. 501, 506, 507, 515, 532, 620, 634, 659, 670-671), the general improvement of lighting (R. 487, 506, 514, 517, 526, 532, 534, 546, 554, 603, 619, 624, 635), heating and ventilation (R. 509-512, 517, 536, 562, 565, 658, 661), parking facilities (R. 499, 511, 578, 590); the maintenance of cleanliness of plant and equipment (R. 487, 510, 551, 559, 582-583, 592, 601-602, 610, 611, 612, 613, 622, 635, 639, 664, 670, 671); and the extension or liberalization of smoking privileges (R. 203, 500, 505, 514, 525, 615).

Recreational and general welfare matters discussed by the Advisory Committee included dances, parties, and Red Cross drives (R. 503, 510, 517-518, 522, 535, 557, 654, 672).

the spot (R. 34; 375, 517, 520, 534-535, 550-551, 564-566, 615-616, 663-665, 674-679), and at other times deferred disposition of the matters to superior management officials (R. 34; 184, 375, 498, 520, 552, 565, 615, 632, 635, 681-682).

The purpose of the *Grievance Committee* was to present employee complaints to management (R. 40-49; 128, 490-493). Grievances presented involved such subjects as layoffs, discharges, seniority, working conditions, pay, and favoritism (R. 49; 128, 409, 449-467, 687-695). The committee protested projected as well as past management actions (R. 257-276, 687-688), and adjustments made between the committee and petitioner sometimes resulted in the establishment of rules for the future (R. 695). Employees were authorized to have their grievances presented to management representatives by their elected representatives on the committee (R. 43, 44; 707, 708-709).

The *Benefit Committee* directed and administered the Employee Benefit Association, whose stated purpose was "to provide specified financial aid to employees, who are members of the Association, in time of bona fide illness, injury or of death" (R. 51; 478, 480). All nonsupervisory employees, after 13 weeks of service with petitioner, automatically became members (R. 51; 278, 478). Association dues, assessed in proportion to earnings, were automatically checked off by petitioner (R. 51; 162, 278, 479).

The function of the *Safety Committee* was to make suggestions to management on matters concerning the safety and health of the employees (R. 49-50; 92, 342-343, 387). It was charged by petitioner with responsibility for inspecting the plant to determine whether any safety devices were needed and whether unsafe or unhealthful conditions existed (R. 50; 92-93; 343, 388). The committee presented its suggestions and recommendations to the plant superintendent and the personnel manager (R. 50; 342-343, 387, 703). Among the matters it presented for management's consideration were proposals for installing new wiring and safety guards on machines, repairing plant facilities and equipment, removing impediments to ingress and egress, and maintaining cleanliness (R. 50-51; 93, 343, 702-706).

The *Finance Committee* administered the Employee Fund consisting of profits from lunch bars, snack stands, dispensing machines and similar concessions maintained by petitioner for the convenience of the employees (R. 57-59; 152-153, 294, 295, 432). Its meetings were attended by both the plant superintendent, who was the committee chairman, and the personnel manager who was its secretary (R. 57, 72; 299, 432). The fund was used to support athletic, recreational and social activities (R. 58, 73-74; 332, 433), and was also available for the purchase of such things as motion picture projectors to exhibit films during lunch periods and pub-

lic address systems for the playing of music during working hours (R. 73-74; 302-303, 337).

B. *The Board's conclusions and order*—Upon the foregoing facts, the Board found that the five nominally separate committees in effect constituted "a single employee representation plan"; that the committees dealt with petitioner concerning "all the matters normally the subject of collective bargaining"; and that the committees were therefore, individually and collectively, labor organizations within the meaning of Section 2(5) of the Act. The Board further found that petitioner had dominated and interfered with the formation and administration of the committees and had given support to them. (R. 73-75). The Board concluded that petitioner by this conduct had violated Section 8(a)(2) and 8(a)(1) of the Act (R. 75), and entered its customary order requiring that petitioner, *inter alia*, cease committing the unfair labor practices found and withhold recognition from and disestablish the committees as collective bargaining representatives of the employees (R. 75-77).[9]

C. *Proceedings in the Court of Appeals*—The court below held that the "evidence in the whole

[9] Disestablishment does not mean, as petitioner apparently believes (Pet. 26, R. 727, 728), that petitioner must destroy the committees. It means only that petitioner must withdraw its support and refrain from any further dealings with them on subjects appropriate for collective bargaining. *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U.S. 272, 275; cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261, 271.

record substantially supports" the Board's conclusion that petitioner dominated and supported the committees (R. 721), and that petitioner "discussed, advised and dealt with" the committees concerning grievances, wages, hours and other terms and conditions of employment (*ibid.*). Rejecting petitioner's contention that since the committees did not engage in effective collective bargaining they could not be considered "labor organizations" within the meaning of the Act (*ibid.*), the court enforced the Board's order in full.

ARGUMENT

1. The facts set forth in the Statement, *supra*, pp. 3-6, amply support the Board findings, affirmed by the court below, that petitioner formed and dominated the committees and contributed support to them.[10] In any event, "Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it." *General Pictures Co.* v. *Electric Co.*, 304 U.S. 175, 178.

2. Petitioner's claim that the committees could not be considered "labor organizations" within the meaning of the Act because, allegedly, they did not "bargain collectively" with petitioner on behalf of the employees is wholly devoid of substance. Section 2(5) defines the term "labor organization" to

[10] The conclusionary testimony of petitioner's officials, upon which petitioner relies (Pet. 2-3, 25-28), to the effect that at no time did petitioner "dominate" the committees, is manifestly insufficient to overcome the concrete evidence of domination on which the Board based its findings.

include "any organization of any kind, * * * or *employee representation committee or plan,* in which employees participate and which exists for the purpose, in whole or in part, of *dealing* with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Italics added.) The legislative history of the original Act shows that Congress deliberately defined the term "labor organization" broadly to outlaw representation plans like petitioner's, "whether they merely 'deal' or 'adjust', or exist for the purpose of collective bargaining."[11] Petitioner's view would sanction company unions provided only that the employer keeps them sufficiently ineffectual. The reach of Section 8(a)(2) would thus vary inversely with the extent of an employer's domination.

The very contention petitioner urges was rejected by the Court of Appeals for the Third Circuit in *National Labor Relations Board* v. *James H. Matthews & Co.*, 156 F. 2d 706, 708 (C.A. 3), with which petitioner mistakenly claims a conflict (Pet. 13). The legality of "a program of labor-management committees" confined to "production problems," the question reserved by the court in the *Matthews* case (156 F. 2d at pp. 707-708), is in

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[11] Memorandum of March 11, 1935, prepared for the Senate Committee on Education and Labor, comparing S. 1958 (74th Cong., 1st Sess.), with S. 2926 (73rd Cong., 2d Sess.), p. 22; reprinted in Legislative History of the National Labor Relations Act, 1935 (Government Printing Office, 1949), pp. 1319, 1347. Sections 2(5) and 8(2) of the original Act were reenacted in 1947 without material change.

no way involved in this case. Here, as in *Matthews,* the role of the committees "went far beyond" production problems and embraced the entire field of collective bargaining subjects. Representation plans of this character have been uniformly condemned by the courts.[12]

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.

GEORGE J. BOTT,
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DAVID P. FINDLING,
Associate General Counsel,
MOZART G. RATNER,
Assistant General Counsel,
IRVING M. HERMAN,
Attorney,
National Labor Relations Board.

FEBRUARY 1952.

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[12] See, *e.g., National Labor Relations Board* v. *Newport News Co.,* 308 U.S. 241; *National Labor Relations Board* v. *Tappan Stove Co.,* 174 F. 2d 1007 (C.A. 6); *National Labor Relations Board* v. *Landis Tool Co.,* 145 F. 2d 152 (C.A. 3); *National Labor Relations Board* v. *Russell Mfg. Co.,* 187 F. 2d 296 (C.A. 5); *American Smelting & Refining Co.* v. *National Labor Relations Board,* 126 F. 2d 680 (C.A. 8); *Bethlehem Steel Co.* v. *National Labor Relations Board,* 120 F. 2d 641 (C.A.D.C.).

APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, 151, *et seq.*), are as follows:

Sec. 2. When used in this Act—

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

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Sec. 10. * * *

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(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred * * * for the enforcement of such order * * *. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

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